**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA**

KENNETH LAMONTE HARDY, SR.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	1:11-cv-1423-TWP-MJD
	)	
RICHARD HOWELL,	)	
	)	
Defendant.	)	

E N T R Y

The plaintiff's motion for leave to file amended complaint [Dkt. 60] has been considered. The tendered amended complaint differs from the original complaint in one respect: under "Claim I," the words "4th Amendment, Equal Protection Clause and 14th Amendment due process law" were added. In addition, the amended complaint names the Muncie Police Department as a defendant even though that defendant was dismissed in the Entry of May 17, 2012, because it is not a suable entity.
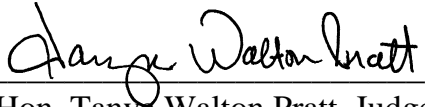
"Although leave to amend a complaint should be freely granted when justice so requires, . . . the district court need not allow an amendment when there is undue delay, bad faith, dilatory motive, undue prejudice to the opposing party, or when the amendment would be futile." *Bethany Phamacal Co. v. QVC, Inc.*, 241 F.3d 854, 860-61 (7th Cir. 2001). "An amendment is futile if the added claim would not survive a motion for summary judgment." *Id.* at 861. That is the case here.

The motion to amend was most likely prompted by the assertion in the defendant's motion for summary judgment that the plaintiff "does not identify the

federal right allegedly violated." The claim asserted by the plaintiff, however, is one of excessive force during an arrest, which falls within the scope of the Fourth Amendment. No amendment to the complaint is required to ascertain the federal right at issue. In addition, to attempt to add a defendant that has previously been dismissed as nonsuable is futile. For these reasons, the motion for leave to file amended complaint [Dkt. 60] is **denied.**

IT IS SO ORDERED.

Date: ___01/14/2013___

_____
Hon. Tanya Walton Pratt, Judge
United States District Court
Southern District of Indiana

Distribution:

All electronically registered counsel

Kenneth Lamonte Hardy, Sr.
#992868
Plainfield Short Term Offenders Program Facility
501 West Main Street
Plainfield, IN 46168